

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 31438 of 2006(P)

AGAINST THE ORDER DATED / / IN 46/03, 47/03 52/03 IN
CP.45/2003 of LABOUR COURT, KOLLAM
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PETITIONER:

DATAWARE DESIGN LAB (P) LTD.,
MRITHUPANYA-1, PLOT NO.71, TECHNOPARK CAMPUS,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
MANAGING DIRECTOR SHAJI KUMAR.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

1. JOSEPH C. MATHEW,
CHITTAZHATHU HOUSE, MUTTUMON, THIRUVALLA.
2. RAMZHI S.,
T.C.62/2533, KALLUMOODU LANE, KAMALESWARAM,
MANACAUD P.O., THIRUVANANTHAPURAM.
3. SUJITH V. MENON,
REVATHY, CMC 11/18, CHERTHALA P.O., ALAPPUZHA.
4. CIBY MARY ABY,
CHETTAKULATHINKARA HOUSE, KODANAD P.O.,
PERUMBAVOOR.
5. UMAMONY V.,
KOUSTHUBHAM, TC. 9/323, P.R.P.NAGAR,
CHANTHI, PONGUMMOODU, THIRUVANANTHAPURAM.
6. M.HARIKRISHNAN,
LEKSHMI NIVAS, PALAYAMKUNNU P.O.,
THIRUVANANTHAPURAM.
7. SHIBU SHINE JOSEPH,
KAINICKARA HOUSE, KOTTAMURY P.O.,
CHANGANASSERY, KOTTAYAM.
8. SAJU K. DEVASSIA,
POIKAYIL HOUSE, RVRA 26, RAILWAY STATION ROAD,
NEAR SAJI HOSPITAL, KAZHAKKUTTAM,
THIRUVANANTHAPURAM.

9. BINDU O.,
O.S.BHAVAN, KARYAVATTOM P.O.,
THIRUVANANTHAPURAM.
10. GOPAKUMAR K.,
KIZHAKKE VEEDU, NEAR PAZHAKARAKAVU,
MUVATTUPUZHA.
11. JACOB CHERIAN,
TC.25/819, CHERIKKAL, BAKERY JUNCTION,
THIRUVANANTHAPURAM.
12. KISHORE K.,
PALLIYIL HOUSE, KANDIYOOR, MAVELIKKARA.
13. ANILA KOZHY,
PLAVARA VEEDU, KUNDARA EAST, KUNDARA, KOLLAM.
14. ANILKUMAR S.O.,
ANIL BHAVAN, KURUVICODE, ELLUVILLA P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM.
15. BINEESH M. PAUL,
MARIYELIL, THRIKKALATHOOR P.O.,
MUVATTUPUZHA, ERNAKULAM.
16. SREEDEVI V.,
TC.24/372, 102, SANGEETH NAGAR,
THYCAUD, THIRUVANANTHAPURAM.
17. RAHUL LESLIE,
'PRIYA', T.C.30/1631, PETTAH,
THIRUVANANTHAPURAM.
18. JAISON PHILIP CHACKO,
KARAKARAMPENTATHU HOUSE, NARANAMMOOZHI P.O.,
R.PERINAD-689 711.
19. VINOD V. JOLSNA,
EDAKULANGARA P.O., KARUNAGAPPALLY, KOLLAM.
20. BINEESH K.,
VIJAYA BHAVAN, MEDICAL COLLEGE P.O.,
CALICUT.
21. ADARSH B.,
USHUS, MUTHUPILAKKADU, PORUVAZHI P.O.,
KOLLAM.
22. SREEKANTH B.,
MADANGARIL MANS, KOTTAPPURAM ROAD,
POOTHOLE P.O., THRISSUR.
23. ANIL K.S.,
DEEPTHY, MALAYALAPUZHA, THAZHOM P.O.,
PATHANAMTHITTA.
24. THE LABOUR COURT,
KOLLAM.

25. THE TAHSILDAR (R.R.),
THIRUVANANTHAPURAM.

R9 TO R12 & R14 TO R21 BY ADV. SRI.GOPAKUMAR R.THALIYAL
R1 ,R3,R4, R5, R7, R8 & R23 SRI.C.S.AJITH PRAKASH
SRI.RAJAKRISHNAN. K
R25 BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF COMMON ORDER DATED 19.4.2004 IN COP 45/2003 ETC. PASSED BY THE 24TH RESPONDENT.

EXT.P2 TRUE COPY OF COMMON ORDER DATED 19.4.2004 IN COP NO.62/03 ETC., PASSED BY THE 24TH RESPONDENT.

EXT.P3 TRUE COPY OF ORDER DATED 30.9.2005 IN COP NO.59/04 PASSED BY THE 24TH RESPONDENT.

EXT.P4 TRUE COPY OF NOTICE DATED 15.6.2006 ISSUED BY THE 25TH RESPONDENT.

EXT.P5 TRUE COPY OF DEMAND DRAFT DATED 4.1.2007 FOR RS. 9 LAKHS DRAWN ON THE CATHOLIC SYRIAN BANK LIMITED, KOLLAM, IN FAVOUR OF THE 24TH RESPONDENT.

EXT.P6 TRUE COPY OF DEMAND DRAFT DATED 4.1.2007 FOR RS. 6 LAKHS DRAWN ON THE CATHOLIC SYRIAN BANK LIMITED, KOLLAM, IN FAVOUR OF THE 24TH RESPONDENT.

EXT.P7 TRUE COPY OF RECEIPT ISSUED BY THE DRIVER STATING THAT THE VEHICLE HAS NOT PLIED AFTER DECEMBER, 2002

EXT.P8 TRUE COPY OF STATEMENT FILED BY THE EMPLOYEES OF THE PETITIONER COMPANY WITH THE TECHNOPARK DATED 11.5.2003

EXT.P9 TRUE COPY OF COPY OF THE RECEIPT ISSUED BY THE CONTRACTOR.

14TH RESPONDENT'S EXHIBITS:

EXT.R14(a) TRUE COPY OF THE LETTER ISSUED BY THE 20TH RESPONDENT DATED 14.10.2003

EXT.R14(b) TRUE COPY OF THE CERTIFICATE ISSUED BY THE PETITIONER DATED 15.10.2003

EXT.R14(c) TRUE COPY OF THE JUDGMENT IN OS NO. 1987/2003 PASSED BY THE MUNISFF'S COURT, TRIVANDRUM DATED 28.10.2004

EXT.R14(d) TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN OS NO. 1987/2003 DATED 4.11.2005

EXT.R14(e) TRUE COPY OF THE RECEIPTS ISSUED BY THE PETITIONER.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 31438 OF 2006

Dated this the 11th day of December, 2007

JUDGMENT

This Writ Petition is filed by the petitioner challenging Exts. P1, P2 and P3 awards passed by the Labour Court allowing the claim petitions filed by respondents, who are previous employees of the petitioner. It is stated in Court that except the case of claimants covered by Ext.P2 award, petitioner has settled the claim of all other claimants. Consequently W.P. is pressed only against Ext.P2. Out of 14 persons whose claim petitions led to Ext.P2 award, 12 persons who are respondents 9 to 12 and 14 to 21 in the WPC are represented in Court by counsel. I heard counsel appearing for petitioner, counsel appearing for the contesting respondents and counsel appearing for respondents 1, 3, 4, 5, 7, 8 and 23. It is reported by Registry that notice could not be served to some of the respondents as they were reported out of India. I do not think any purpose will be served by keeping the W.P. pending. Moreover, under interim orders passed by this Court, petitioner has paid Rs. 28 lakhs to the 14 claimants covered

by Ext.P2 award and therefore an early disposal of the W.P. is absolutely essential to meet the ends of justice.

2. Petitioner admittedly collected refundable security deposit at the rate of Rs. 2 lakhs per head from Graduate Engineers who are claimants in the three claim petitions and employed them in petitioner's unit where software development was going on. Besides security deposit, training fee of Rs. 62,500/- from each claimant was also collected by the petitioner. According to the claimants, no salary was paid to them, and therefore they made a claim for arrears of salary and other benefits also. The petitioner remained ex-parte in all the claim petitions, which led to the impugned awards.

3. The contention raised by the petitioner is that petitioner was not given an opportunity to defend the case before the Labour Court. Notice could not be served on the petitioner only because the unit remained closed. As and when unit was closed, it was the duty of the petitioner to make arrangement with postal authorities for receiving correspondence in the address of the Directors of the company. Therefore failure to serve notice on the petitioner company was on account of petitioner's own lapses. In any case, I feel a decision on

merits is called for by the Labour Court because of the contest in regard to payment of salary claimed by the petitioner and denied by the respondents-claimants. Evidence has to be necessarily gone into to settle the liability at least pertaining to salary. Since petitioner did not seriously contest their liability to refund security amount, this Court ordered payment through Labour Court. It is admitted that petitioner has paid the entire security amount, but without interest to the 14 claimants covered by Ext.P2. Even though petitioner has stated that several other claimants covered by Exts.P1 and P2 awards are also paid their security deposit, they have not confirmed to this Court. While the claim of the petitioner is that the unit was closed in November, 2002, respondents-claimants contend that unit had worked till November, 2003. Even if petitioner's case is accepted, it was the duty of the petitioner to have refunded the security deposit in November, 2002 itself, which was paid to the claimants covered by Ext.P2 award only in July, 2007, that too under interim orders of this Court. Petitioner sold assets even in violation of the injunction order granted by the civil court on a suit filed by the claimants, which is evident from Ext.R14(c). Sale of property was approved by this Court without noticing the civil

court judgment. However, petitioner has furnished security to cover the claim amount under interim orders of this Court in a disposed of case. Therefore respondents-claimants will be able to recover the award amount. In the circumstances, and in view of the delay of five years in paying the security deposit, I dispose of the W.P.C. setting aside Ext.P2 on condition that petitioner will deposit a further sum of Rs. 14 lakhs before the Labour Court within a period of two months from today. Labour Court will repost the claim petitions immediately on production of a copy of this judgment and post the case for evidence to any date after payment as above. In other words, Labour Court will proceed with taking evidence in the matter only after petitioner deposits Rs. 14 lakhs as directed above. Claim Petitions will be disposed of on merits within a period of two months thereafter.

4. So far as Exts. P1 and P3 awards are concerned, I leave freedom to the petitioner to file applications for setting aside ex-parte awards and grant 60 days time from today to file such applications, along with proof of settlement of liability of each and every claimant therein. There will be a direction to the Labour Court to examine the applications to be filed by the petitioner and the proof submitted along

with them. Labour Court will recall the ex-parte awards passed in favour of such of the claimants who are settled by the petitioner. However, if any claimant is not settled by the petitioner, then the award in respect of such claimant will stand cancelled only on deposit of claim amount in the case of such claimant-employee. Labour Court will proceed to dispose of these cases also on merits after completing the formalities. If liability is not settled in respect of any claimant and if the petitioner fails to deposit the claim amount within the time stated above, Exts. P1 and P2 awards in favour of such claimants will stand upheld and Labour Court can recommend recovery of the amount covered by such awards.

Petitioner and the claimants are free to settle the matter out of court if they so desire.

(C.N. RAMACHANDRAN NAIR)
Judge

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